HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 385 OF 2004.

Shri Rajaram Shankar Thorat. ...Petitioner

V/s.

Sou. Sunita R. Thorat & Ors. ...Respondents

Shri Dilip Bodake, advocate for petitioner

Shri Vilas B. Tapkir, advocate for Respondent Nos. 1 and 2.

Shri K.V.Saste, APP for State.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 1,2005

P.C. :-

1. Heard the learned counsel for the parties.

2. Rule made returnable forthwith by consent.

3. Shri. Vilas Tapkir, the learned advocate waives notice for respondent Nos. 1 and 2 and Shri K.V.Saste, the learned APP for State-respondent No.3.

4. As short question is involved, petition is taken up for final disposal forthwith, by consent.

5. This petition takes exception to the decision of the Sessions Court, Karad dated 8th July, 2004

directing the petitioner to pay monthly maintenance to the respondent Nos. 1 and 2 in the sum of Rs.500/- and Rs.400/- respectively while allowing Criminal Revision Application No.5 of 2003 filed by them.

6. The short question that arises for my consideration in this petition is, whether it is open for this court to accept the evidence which has come on record, to record a finding that the respondent No.2 is not a legitimate child born out of the wedlock between the petitioner and respondent No.1. This issue has been squarely answered by the decision of the Apex Court in the case of **Smt.Dukhtar Jahan V/s.Mohammed Farooq reported in 1987 SC 1049.**

7. In other words, the issue regarding legitimacy of the respondent No.2 being born out the wedlock of petitioner and respondent No.1 will have to be decided before the Civil Court, if and when the petitioner seeks the said declaration before that Court. Applying the principle stated by the Apex court in the above-said Judgment, I have no hesitation in upholding the maintenance granted by the Sessions court to the Respondent No.2 in the sum of Rs.400/-per month while keeping option of the petitioner to seek appropriate declaration from the Civil court open, if so advised.

8. However, I find substance in the argument canvassed on behalf of the petitioner that respondent No.1 in her evidence has categorically admitted that after marriage she had no physical relationship with the petitioner, which fact clearly establishes the position that the child born to the respondent No.1 was because of her physical relationship with some other person other than the petitioner. If it is so, that can be a valid ground to deny the relief of maintenance to the respondent No.1. Viewed in this perspective, I am inclined to set aside the order of maintenance passed in favour of the respondent No.1 by the lower court which is impugned in this petition.

9. Accordingly, this petition succeeds to the limited extent as mentioned above. The impugned order passed by the lower court which requires the petitioner to pay monthly maintenance amount to Respondent No.1 in the sum of Rs.500/- is set aside. Whereas, the direction to pay maintenance at the rate of Rs.400/- per month to the Respodnent No.2 is maintained as it is till appropriate declaration is granted by a competent Civil Court regarding his legitimacy.

10. Petition is disposed of accordingly.